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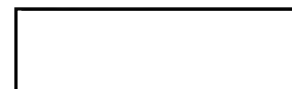
MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with the Murphy Commission to Discuss
William R. Harris' Issue Paper

1. At the request of the Commission on the Organization of the Government for the Conduct of Foreign Policy (Murphy Commission), I met with the Commission on 16 December to go over certain legal and legislative matters which had been put in an issue paper for them. (Copy attached.) Mr. Lawrence Houston had also been invited. Present from the Commission were Robert D. Murphy, Chairman; Dr. David M. Abshire; William J. Casey; and staff members Francis O. Wilcox, Fisher Howe, and Thomas J. Reckford. Also present was William R. Harris, who had prepared the basic submission to the Commission entitled "Legal Authority for the Conduct and Control of Foreign Intelligence Activities." The Chairman requested that I comment on the issues paper.

2. Issue 1: "Should the Commission emphasize that the intelligence community must comply with the laws of the United States?"

The paper referred to prior intelligence activities of questionable legality, citing the "Huston Plan" and assistance to the White House "plumbers." There were three options specified: (a) that the Commission viewed current intelligence activities as in conformance with the law; (b) to reaffirm the importance of compliance with the law; and (c) to say nothing. I indicated that option (a) certainly was suitable from our viewpoint and, furthermore, was true. I pointed out that Tom Huston had testified regarding the Agency's participation in the "Huston Plan" before the Senate Armed Services Committee to the effect that the recommendation made with respect to CIA in the "Huston Plan" was simply that CIA increase its coverage of foreign activities.



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3. Issue 2: "Is additional or clarifying legislation desirable for the conduct or control of foreign intelligence activities? "

"a. to enhance criminal sanctions for unauthorized disclosure of intelligence sources and methods"

We discussed sources and methods legislation in some detail, pointing out the Director's strong view that criminal sanctions are needed in view of the inadequacy of existing law. William Harris agreed that legislation was desirable but seriously questioned whether we should seek an injunction. I pointed out that we strongly favored an injunction and this had been concurred in by the Department of Justice. I added that there were some other questions that we were still working with Justice on and, furthermore, I would be working more with Mr. Harris. It was suggested to the Commission that its position could well be that it supported sources and methods legislation without endorsing any particular version of such legislation.

"b. to establish the National Security Agency as an independent agency"

I indicated we took no strong position on legislation to establish NSA as an independent agency, but queried what this would accomplish. It was also indicated that this might not be the time for congressional review of NSA's activities in detail as would undoubtedly occur if legislation were sought.

"c. to authorize collection of information about multinational entities"

I indicated the Agency saw no need for this legislation since we were authorized under existing law and directives to secure such foreign intelligence.

"d. to establish standards for domestic or transnational collection of intelligence"

It was indicated that we saw no need for legislative standards in this area. Harris indicated he had been informed

by the NSA General Counsel that such legislation was necessary. (I am certain that he has garbled some legal problems in connection with transnational intelligence arising out of inadvertent surveillance of Americans followed by discovery motions in subsequent prosecutions.

"e. to balance the duties of the DCI for the protection of sources and methods with the duty to supervise declassification of foreign intelligence information."

It was pointed out that E. O. 11652 deals with declassification. Further, the new Freedom of Information Act provides for declassification reviews and any additional legislation for the DCI in this area was simply unnecessary and unwarranted.

4. Issue 3: "What changes in the statutory authority for the clandestine services should be sought?"

a. We reviewed the votes on the riders to prohibit covert action by the CIA in the House and the Senate. Further, we pointed out that Justice ruled that such actions are legal. Also, we pointed out the House and Senate versions of the Foreign Assistance Act, which is still in conference and has riders requiring Presidential determinations and reports to Congress. Thus, there was ample legal authority in our view.

b. We argued that a law on this subject is simply not required. There are differences among lawyers as to where international treaty obligations would prohibit certain types of covert action. I explained that we had taken the position that the President's inherent authorities as Commander in Chief and also under international law as a sovereign took precedent. Further, there was a recent legal opinion by the State Department, concurred in by the Secretary of State and the Attorney General, that the Vienna Convention on the status of diplomats and embassies did not affect espionage activities.

c. In addition to the stated requirement, Mr. Harris also offered the suggestion that the DDO should have its own legal counsel so that covert actions would be more thoroughly

scrutinized. We took the position that there is no requirement for formal legal opinions as to covert actions since fundamentally these are basic policy questions. As to the suggestion for a separate counsel for the DDO, I stated that the DDO can receive legal review now if it is desired and there seems to be nothing gained by statutorily requiring legal opinions.

5. It appeared throughout that the Commission members were much in accord with views that we expressed. Particularly Chairman Murphy was of the view that if our legal authorities are clear and about which he saw no problem, the less precise one became in law about these matters, the better. All members commented on what they termed an excellent presentation.

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JOHN S. WARNER
General Counsel

Attachment

cc: DCI
DDCI
DDO
AD/DCI/IC
General Counsel, NSA

COMMITTEE II - Intelligence

ISSUES PAPER

STATUTORY AUTHORITY

1. Issue: Should the Commission emphasize that the intelligence community must comply with the laws of the United States?

Although all government agencies must perform in accordance with U.S. law, there have been instances in the past few years where one or more intelligence agencies have engaged in conduct of questionable legality (e.g., approving the "Huston Plan" or giving improper assistance to White House "plumbers"). Urging compliance with the law might be welcomed in some quarters and might add to the effectiveness of American foreign policy by increasing public confidence in the institutions of government.

Essentially, the available options are (a) to state satisfaction that intelligence activities, as delegated by NSC intelligence directives and other executive authority, are conducted in accordance with U.S. law, (b) to reaffirm the importance of compliance with the law or (c) to say nothing about this subject.

2. Issue: Is additional or clarifying legislation desirable for the conduct or control of foreign intelligence activities?

A number of areas possibly needing new legislation have been suggested. The most important of these appear to be:

- a. to enhance criminal sanctions for unauthorized disclosure of intelligence sources and methods
- b. to establish the National Security Agency as an independent agency
- c. to authorize collection of information about multinational entities
- d. to establish standards for domestic or transnational collection of intelligence
- e. to balance the duties of the DCI for the protection of sources and methods with the duty to supervise declassification of foreign intelligence information.

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3. Issue: What changes in the statutory authority for the clandestine services should be sought?

(Note: This issue relates to the Committee's separate consideration of various aspects of clandestine activity).

Among the available options are (a) to revise the National Security Act to make more explicit the subject of clandestine activity, (b) to urge compliance with international treaty obligations of the U.S., (c) to require formal legal opinions within the NSC or Department of State prior to authorizations of covert action by the NSC, or otherwise to assure that clandestine services are compatible with international legal obligations.